

BEFORE THE
STATE BOARD OF REGISTRATION FOR THE HEALING ARTS

STATE BOARD OF REGISTRATION
FOR THE HEALING ARTS,

Board,

v

PENNY E DE FRANCO, M D

Licensee

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Case No 2002-003324

SETTLEMENT AGREEMENT

Comes now Penny E De Franco, (Licensee) and the State Board of Registration for the Healing Arts (the Board) and enter into this Agreement for the purpose of resolving the question of whether Penny E De Franco's license as a physician and surgeon will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621 045, RSMo

1 Licensee acknowledges that she understands the various rights and privileges afforded by law, including the right to a hearing of the charges against Licensee, the right to appear and be represented by legal counsel, the right to have all charges against Licensee proven upon the record by competent and substantial evidence, the right to cross-examine any witnesses appearing at the hearing against Licensee, the right to present evidence on Licensee's own behalf, the right to a decision based upon the record by a fair and impartial

administrative hearing commissioner concerning the charges pending against Licensee, and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided Licensee by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2 Licensee acknowledges that she may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitutes grounds for discipline of Licensee's license.

3 Licensee acknowledges that she has been informed of her right to consult legal counsel in this matter.

4 The parties stipulate and agree that the disciplinary order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take further disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

5 Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620 and 621, RSMo, as amended.

I

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following

JOINT PROPOSED FINDINGS OF FACT

1 The State Board of Registration for the Healing Arts ("the Board") is an agency of the State of Missouri created and established pursuant to § 334 120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo

2 Respondent is licensed by the Board as a medical physician and surgeon, License No 101262 Respondent's Missouri license is current and active and was so at all times relevant herein

3 Pursuant to §334 075, RSMo 2000, and 4 CSR 150-2 125, every Board licensee is required to obtain 25 hours of continuing medical education each year to renew his or her license

4 On Respondent's 2002-2004 renewal application, Licensee indicated that she obtained 25 hours of continuing education during the period of January 1, 2001, through December 31, 2001

5 On May 13, 2002, the Board mailed a letter to Respondent at her home address notifying her that the Board was conducting an audit of her continuing education hours for the period of January 1, 2001, through December 31, 2001 The Board requested that

Respondent submit documentation verifying her 25 hours of continuing education within 21 days of receipt of the letter

6 The Board received no response from Respondent regarding its letter of May 13, 2002

7 On July 5, 2002, the Board mailed Respondent a second letter, via certified mail return receipt requested, to her home address The Board's letter was received and signed for by "De Franco "

8 The July 5, 2002, letter notified Respondent that the Board had not received the documentation as set forth in its May 13, 2002, letter

9 The July 5, 2002, letter further ordered Respondent to submit the necessary documentation by July 31, 2002

10 The Board received no response from Respondent regarding its letter of July 5, 2002

11 On October 25, 2002, the Board issued Respondent a Notice and Order Duces Tecum requiring her to appear on December 4, 2002, and produce information regarding the Board's continuing medical education audit

12 The Board's Notice and Order Duces Tecum were sent to Respondent via certified mail on October 25, 2002, to her home address The Board's Notice and Order Duces Tecum were received and signed for at Respondent's home address

13 On November 21, 2002, Respondent informed the Board via telephone that she would not appear and produce information regarding the Board's continuing medical education audit

14 Pursuant to 4 CSR 150-2 125, licensees are required to report and attest to the number of continuing education hours obtained within the specified year and to maintain documentation of said hours for at least three years after the reporting period

15 Pursuant to 4 CSR 150-2 125(3), "[T]he board may conduct an audit of licensees to verify compliance with the continuing education requirement Licensees shall assist the board in its audit by providing timely and complete responses to the board's inquiries "

16 To date, Respondent has failed to submit documentation verifying that she obtained 25 hours of continuing medical education for the period of January 1, 2001, through December 31, 2001

17 Respondent failed to assist the Board by submitting timely and complete responses to the Board's inquiries during the audit

JOINT PROPOSED CONCLUSIONS OF LAW

1 Cause exists for Petitioner to take disciplinary action against Respondent's license under § 334 100 2(6), RSMo 2000, which states in pertinent part

* * * *

2 The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo,

against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered the person's certificate of registration or authority, permit or license for any one or any combination of the following causes

* * * *

(6) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter,

* * * *

2 Licensee's conduct, as established by the foregoing facts, falls within the intendments of Section 334 100 2(6), RSMo

3 Cause exists for Board to take disciplinary action against Licensees' licenses under Section 334 100 2(6), RSMo

II

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the State Board of Registration for the Healing Arts in this matter under the authority of Section 621 110, RSMo This Agreement will be effective immediately on the date entered and finalized by the Board

A Effective the date the Board enters into the Agreement

1 The medical license, No 101262, issued to Licensee is hereby PUBLICLY REPRIMANDED


2 This Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 334, RSMo, by Licensee not specifically mentioned in this document

B Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to § 536 087, RSMo, or any claim arising under 42 USC 1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, or from the negotiation or execution of this agreement The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable

C In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein

LICENSEE

BOARD

 12/2/03
Penny E De Franco, M D Date

 12/11/03
Tina Steinman Date
Executive Director

JEREMIAH W (JAY) NIXON
Attorney General

William Vanderpool
WILLIAM S VANDERPOOL Date
Assistant Attorney General
Missouri Bar No 54185

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Attorneys for Board

EFFECTIVE THIS 11 DAY OF December, 2003